

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Management Registry, Inc.,

Court File No. 17-cv-05009 (JRT/KMM)

Plaintiff,

v.

A.W. Companies, Inc., Allan K. Brown,  
and Wendy Brown,

**PLAINTIFF'S DECLARATION OF  
ATTORNEYS' FEES AND COSTS IN  
COMPLIANCE WITH THIS  
COURT'S ORDER AND REPORT  
AND RECOMMENDATION [DE #403]  
PURSUANT TO 28 U.S.C. § 1927**

Defendants.

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I, James M. Morris, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am of sound mind, am competent to testify to the matters stated herein, and have personal knowledge of the facts and statements in this declaration.

2. I submit this Declaration in response to the Court's directive that “[w]ithin seven days of this decision, plaintiff MRI shall submit a petition for the reasonable attorney's fees caused by Mr. Loftus's vexatious conduct in Part II.B.1 of this Order and Report and Recommendation.” [April 20, 2020 Order, ECF No. 403, p.37, ¶4]

3. In accordance with the Court's directive, the undersigned states that a review of the billing records maintained by Morris & Morris, P.S.C. in the ordinary course of business reflect that the undersigned's firm expended a total of 100.3 hours related to Mr. Loftus's vexatious conduct in connection with the matters identified by the Court in Part II.B.1 of its Order and Report and Recommendation.

4. Based upon the Court's April 20, 2020 Report and Recommendation finding that the \$500 per hour was a reasonable amount for the undersigned, the undersigned does not set forth, again, the basis for his hourly rate, but simply requests that the Court continue to utilize that figure as it deems appropriate.

5. The appropriate time entries, after reduction for duplicative or unrelated entries, reflects the following time expenditures by Declarant and his law firm in connection with Mr. Loftus's vexatious conduct during the five specific time periods/incidents described in II.B.1., identified by MRI as being those events related to the following specific activities:

- a. Loftus's April 24, 2019 Motion
- b. Loftus's June 14, 2019 Motion
- c. Loftus's September 3, 2019 Motion to Strike
- d. Compliance, or lack therewith, with the Court's January 29, 2020 Order
- e. Loftus's labeling of discovery required in the February 24, 2020 Order
- f. Attorneys' Fees and Costs incurred in preparing the within Fee Petition.

6. Based upon the Court's directives, the following time records reflect the additional time incurred as a result of Mr. Loftus's vexatious conduct<sup>1</sup>:

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<sup>1</sup> Several of the examples in the Court's Report and Recommendation do not have any, or very little, time attendant to the actual event, but substantial time subsequent thereto. For example, although one of the clearest examples of misconduct is the labeling of discovery with "Irrelevant and Non-Responsive." However, there was substantial time expended in attempting to comply with the Court's directives that corresponded with that action. Declarant has included the time expended as a result of

<b>Date</b>	<b>Description</b>	<b>Party</b>	<b>Time</b>	<b>Amount</b>
4/9/2019	Exchange of multiple e-mails with Pins and Loftus regarding the need to discuss new counsel with Judge Menendez's office out of professional courtesy prior to engaging in extended filing of Motions to Compel and needless discovery disputes; receipt of multiple e-mails from Loftus refusing requests	JMM	1.3	\$650
4/16/2019	Conference call with Ella regarding concern over demands from Loftus, refusal to include Judge, and next steps; sharing of documentation regarding same	JMM	1.2	\$600
4/18/2019	Receipt and review letter from Alex Loftus re: potential motion to compel discovery and response to Wendy Brown's request for production; exchange of emails with Loftus re: status of discovery requests; telephone conference calls with Ella regarding issues with Loftus, threats of motions, Ella's concerns regarding whether M&M has performed its duties, explanations on steps taken to comply, and discussion how to handle	JMM	2.3	\$1,150
4/19/2019	Telephone conference and e-mails with MN counsel regarding threatened Motion	JMM	1.1	\$550
4/21/2019	Receipt and review of email and letter from opposing counsel re: outstanding document discovery and threatened Motion to Compel	JMM	0.7	\$350
4/22/2019	Drafting of Response to email from opposing counsel re: supposed outstanding document discovery and his threatened Motion to Compel, exchanges of multiple e-mails with MN counsel; research regarding issues raised by lack of meet and confer, explanation of same to Ella	JMM	1.5	\$750

the gamesmanship. If that was not the intention of the Court, Declarant apologizes to the Court for his misunderstanding.

4/26/2019	Receipt and review of Wendy Brown's Motion to Compel Discovery; Notice of Hearing on Motion on May 14; Meet and Confer Statement; Proposed Order Compelling MRI to Supplement Certain Discovery Responses and Respond to Certain Discovery Requests; numerous emails to opposing counsel and MN counsel re: withdrawing Motion to Compel, failure to comply with Meet and Confer, etc.; request for telephonic conference with Judge Menendez, receipt of refusal from Loftus; telephone conference with client regarding same, attempting to explain actions of counsel, and need for flight to MN	JMM	3.3	\$1,650
4/28/2019	Receipt and review of email from MN counsel re: conference call with AW counsel and call with Judge Menendez; response to same	JMM	0.4	\$200
4/29/2019	Contact to Chambers for Judge Menendez; Receipt of detailed e-mail from Judge Menendez and drafting of response to email from Judge Menendez re: opposing counsel's Motion to Compel; numerous emails with opposing counsel requesting a meet and confer as required by judge; telephone conference with co-counsel re: same	JMM	4.1	\$2,050
4/30/2019	Exchange of numerous e-mail exchanges with co-counsel; ongoing telephone conference calls with same inquiring about new meet and confer, concern about ongoing issues with Loftus, and how Judge Tunheim and Menendez will handle	JMM	1.1	\$550

5/1/2019	Receipt and review of email from Loftus attempting to suggest refusal to produce documents; exchange of multiple e-mails requesting, yet again, a proper meet and confer; receipt of Supplemented Meet and Confer statement from Alex Loftus; telephone conference call with Ella regarding same; research regarding response/objection	JMM	4.3	\$2,150
5/2/2019	Numerous emails between opposing counsel and MN counsel re: Meet and Confer requirements and discovery; pulling together of screenshots of each and every e-mail, communication, and documentation for Objection	JMM	2.9	\$1,450
5/2/2019	Review and revision to Meet and Confer Objection; comments to JMM regarding same	SKM	0.5	\$250
5/3/2019	Finalization and filing of Objection to Meet and Confer Statement; continued research regarding same as well as preliminary response to Motion to Compel; conference call with Ella regarding same	JMM	1.8	\$900
5/6/2019	Exchange of emails with MN counsel and telephone calls re: Objections and refusal to meet and confer	JMM	0.3	\$150
5/7/2019	Telephone conference call with opposing counsel regarding supposed discovery deficiencies (omitting discussions related to Defendants' production)	JMM	0.4	\$200
5/8/2019	Receipt of Order from Judge Menendez denying Wendy Brown's Motion to Compel discovery ordering parties to Meet and Confer within 14 days; exchange of e-mails with co-counsel regarding same; telephone call with MN counsel; e-mails exchanged with opposing counsel regarding same	JMM	1.1	\$550

5/10/2019	Discussion with Ella and opposing counsel regarding discovery issues (discussion regarding Defendants' production omitted from time)	JMM	0.7	\$350
5/13/2019	Receipt of e-mail from Ryan Moore regarding purported issues in MRI production, drafting of response correcting misrepresentations regarding same	JMM	0.6	\$300
5/14/2019	Exchange of e-mails regarding ongoing threat of filing motions to compel and refusing to meet and confer by Loftus	JMM	0.5	\$250
5/17/2019	Email exchange with MN counsel re: his meet and confer with Loftus to the extent it addressed their threatened motion to compel	JMM	0.8	\$400
6/7/2019	Receipt and review of AW Motion to Compel Discovery, Meet and Confer statement and all attachments thereto; drafting and filing of MRI's Objection to Motion to Compel	JMM	4.6	\$2,300
6/10/2019	Attended Court Ordered Meet and Confer prior to Hearing in order to address Loftus's Motion to Compel and the "confusion" related thereto (flight already compensated in previous sanction order)	JMM	0.7	\$350
6/12/2019	E-mail from Ryan Moore regarding intent to "meet and confer" before the commencement of Smith's deposition on 6/13; drafting of detailed response to same explaining that counsel failed to meet the Court's deadline for Defendants' meet and confer on the previous Motion	JMM	1.2	\$600
6/14/2019	Receipt and review of AW's Third Motion to Compel, Exhibits, Declarations, and Meet and Confer Statement; telephone conference with co-counsel; drafting of Objection to Meet and Confer Statement; receipt of directive that local counsel be present at June 18, 2019 Hearing	JMM	3.9	\$1,950

6/18/2019	Attended Hearing on pending Motions to Compel; preparation for meeting with AW regarding MRI production discovery disputes; AW withdrew Third Motion to Compel; receipt of Text Order confirming withdrawal of Motion	JMM	1.2	\$600
9/3/2019	Receipt and review of AW's Motion to Strike MRI's Modified request for sanctions; receipt of Memorandum in Support; telephone call to MN counsel re: the same; drafting of response to Motion to Strike (client not charged for full amount due to embarrassment of the level of filings)	JMM	3.2	\$1,600
9/4/2019	Receipt of Text Order denying Motion to Strike; exchange of emails with MN counsel re: the same	JMM	0.5	\$250
1/29/2020	Receipt of Order addressing concerns and ordering Declarations to be filed by Loftus and Brown; email exchanges with Loftus regarding personal e-mails of AW employees	JMM	0.7	\$350
2/2/2020	Exchange of multiple emails with Loftus Re: need for Meet and Confer regarding his, and his clients' responsibilities related to production of e-mails and searches conducted; receipt of response refusing to meet and confer	JMM	0.8	\$400
2/3/2020	Telephone calls with MN counsel regarding Orders and next steps; email to Judge Menendez regarding refusal of Loftus to respond to Court's directives; e-mail exchanges with Loftus regarding same	JMM	1.5	\$750
2/4/2020	Receipt of e-mail from Loftus requesting availability for meet and confer as previously requested; response to same	JMM	0.5	\$250

2/10/2020	Receipt of Order scheduling telephonic Hearing for 2/13/20; telephone call with MN counsel re: the same; exchange of multiple e-mails from Loftus regarding declarations, production, etc.; drafting of e-mails addressing lack of compliance with Court's directives; Receipt of links for production; uploading of various sections; beginning of research on AW's latest production; discussion with PL regarding document dump, lack of table of contents, and concerns about tracking e-mails without metadata review of documentation regarding for upcoming Hearing; drafting of numerous e-mails to Loftus regarding what was included in the latest production and what has been withheld	JMM	6.4	\$3,200
2/12/2020	Receipt of new Declaration from Wendy Brown; review of the same; review of document production; receipt of additional links for production; uploading of various sections; continued research regarding AW's production; exchange of multiple e-mails with Loftus regarding same	JMM	4.3	\$2,150
2/13/2020	Ongoing attempts to complete review of documents and information for court hearing; Preparation for and attendance at telephone hearing with Judge Menendez; telephone conference call with MN counsel regarding same; receipt and review of Order re: the same; telephone conference call with client to update on ongoing morass	JMM	3.7	\$1,850
2/14/2020	Numerous e-mails with Loftus regarding production of documents issues	JMM	1.4	\$700
2/15/2020	Numerous emails and downloads received from Loftus; response to same; request for a meet and confer; refusal of same	JMM	1.6	\$800

2/16/2020	Numerous e-mail exchanges with Loftus regarding production of invoices and financial statements, meet and confer requirements	JMM	1.4	\$700
2/17/2020	Review of defendants' production; receipt of declarations; comparison of productions to declarations; receipt of Loftus declaration; drafting of e-mail to Loftus regarding same	JMM	4.2	\$2,100
2/18/2020	Drafting of e-mail to Judge Menendez and forwarding to local counsel for review; telephone call with MN counsel; exchange of multiple e-mails; modifications to same; ongoing review of substantial documentation from Loftus	JMM	3.8	\$1,900
2/19/2020	Telephone call with MN counsel; receipt of declarations from Loftus and employees; exchange of multiple e-mails with Loftus; review and revision of detailed Judge's e-mail; finalization and filing of same; ongoing review of document dump by Loftus; multiple e-mail exchanges with Loftus; continued review of documentation; receipt of e-mail from Loftus to Judge Menendez regarding same	JMM	4.2	\$2,100
2/20/2020	Preparation for upcoming hearing; continued review of documentation; ongoing review of documentation	JMM	3.2	\$1,600
2/21/2020	Preparation for and attendance at telephonic hearing; review of substantive documentation for same; discussion with Ella regarding same	JMM	3.1	\$1,550
2/24/2020	Receipt and review of Order from Judge Menendez; telephone calls to and from MN counsel; docketing of deadlines regarding same	JMM	1.1	\$550

2/25/2020	Receipt and review of Judge's Order for telephonic status; e-mail exchanges with co-counsel; receipt and review of additional files from Loftus; review of newly produced documents and comparisons to previous production; receipt and review of corrected production without the commentary as Court Ordered	JMM	4.8	\$2,400
4/20/2020	Receipt and review of Court Order awarding sanctions; docketing of response time regarding same; exchange of multiple e-mails with MN counsel regarding drafting of declarations	JMM	1.8	\$900
4/23/2020	Commenced reviewing time records, e-mails, and case file for time entries; removal of redundant, duplicative, and unnecessary fees; request to MN counsel for fees and costs incurred	JMM	2.5	\$1,250
4/24/2020	Continued review of time records; finalization of fee schedule; drafting and finalization of declaration; filing of same	JMM	3.1	1550
<b>TOTAL</b>			<b>100.3</b>	<b>\$50,150</b>

7. The only costs attributable to Mr. Loftus's vexatious conduct are those associated with the ordinary costs of business. Plaintiff therefore does not itemize any of the same herein.

8. Declarant states that some of the conduct of counsel that was specifically enumerated in the Court's Report and Recommendation was isolated in terms of the actual expenses incurred as a result of Mr. Loftus's vexatious conduct. Multiple examples, in addition to those specifically enumerated in the Court's Report and Recommendation have been identified by the Court in other filings (outside of the discovery sanctions-related

misconduct).

9. Declarant respectfully requests that the Court review the multitude of vexatious conduct exhibited from the very first instance of Mr. Loftus's engagement in the within matter, and issue whatever sanctions that it deems appropriate.

This declaration was executed on April 24, 2020, in the County of Fayette, Commonwealth of Kentucky.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT EVERYTHING I HAVE STATED IN THIS DOCUMENT IS TRUE AND CORRECT.

*/s/ James M. Morris*  
James M. Morris, Declarant

DATED April 24, 2020

**MORRIS & MORRIS, P.S.C.**

/s/ James M. Morris

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**ATTORNEYS FOR PLAINTIFF**